

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of KONSTANTINO HAWTHORNE
and HALLIE HAWTHORNE, Minors.

DEPARTMENT OF HUMAN SERVICES, f/k/a
FAMILY INDEPENDENCE AGENCY,

UNPUBLISHED
January 19, 2006

Petitioner-Appellee,

v

EFTHYMIA HAWTHORNE,

Respondent-Appellant.

No. 262433
Macomb Circuit Court
Family Division
LC No. 03-054071-NA

Before: Donofrio, P.J., and Borrello and Davis, JJ.

PER CURIAM.

Respondent appeals as of right from the trial court order terminating her parental rights to the minor children under MCL 712A.19b(3)(c)(i), (g), and (j). We reverse and remand to the trial court for additional proceedings.

The initial disposition was held on March 6, 2003, and more than 182 days elapsed between initial disposition and conclusion of the termination hearing on March 22, 2005. The conditions leading to adjudication were respondent's substance abuse and domestic violence.

Respondent, who was addicted to cocaine, did not make any progress toward becoming drug-free from January 2003 to March 2004. She participated in two drug treatment programs, but relapsed. She was incarcerated for shoplifting in March 2004, and she stated that at that time, she experienced a turning point in which she realized that she would die from drug use if she continued using. Respondent remained sober while incarcerated from March 2004 to October 2004 and during a 90-day inpatient program at Sequoia House. She attended Narcotics Anonymous regularly, and her counselor, Robin Ance, opined that respondent's prognosis was very good. It was evident to Robin Ance that respondent was committed and determined to remain sober for herself and was not merely going through the motions. The evidence showed that all random drug screens from September 2004 to the time of the March 2005 termination hearing, including those taken at the drug treatment programs and those requested by Steven Haig, were negative.

Thus, the issue before the trial court was whether there was a reasonable expectation that respondent would remain drug-free. The evidence clearly showed that respondent was addicted to cocaine and that sobriety would be a struggle for her every day, but the evidence also showed that she was committed to remaining sober. From the record before us, we cannot find any evidence that respondent used drugs from March 2004 to March 2005. For most of that time she was confined or closely scrutinized, but from December 6, 2004, to the March 2005 termination hearing, she was not in a structured setting and there was no evidence that she relapsed. She complied with the primary element of her parent agency agreement, which was sobriety. Furthermore, she obtained employment and completed parenting classes. Respondent was a person who had no evident personality disorders. She also had the ability to maintain good employment. She was also, if she abstained from drug use, able to learn good parenting skills and able to provide for the children's needs. Respondent testified that she was not able to resume the children's care immediately, but estimated that she would be ready in approximately nine months. This showed that respondent was realistic about the difficulty of the task ahead of her.

Respondent's two prior relapses provided the basis for the trial court's decision that there was no reasonable expectation that respondent would remain sober, but the evidence at the time of the termination hearing showed that respondent was not using drugs, that she was participating in services, that she was employed, that she was given a good prognosis by her counselor, and that she had a realistic view of the struggle ahead of her. The evidence at the time of termination did not show that respondent would likely relapse, but rather that it was more likely that she would succeed in this recovery than in her previous attempts at sobriety. Therefore, the statutory grounds for termination of respondent's parental rights were not established by clear and convincing evidence. MCR 3.977(J); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). The evidence was not yet clear and convincing that there was no reasonable expectation that respondent could remain sober. Therefore, while we are attuned to the trial court's concerns, we reverse and remand to the trial court for additional proceedings to assess whether respondent was able to maintain sobriety.

Because the statutory grounds for termination were not established, the trial court need not have determined whether termination of respondent-appellant's parental rights was clearly not in the children's best interests. MCL 712A.19b(5); *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000).

Reversed and remanded for additional proceedings. We do not retain jurisdiction.

/s/ Pat M. Donofrio
/s/ Stephen L. Borrello
/s/ Alton T. Davis